

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRIAN HAWKS,

Plaintiff,

v.

Hon. Hugh B. Scott

05CV156A

Order

COMMISSIONER ROCCO DIINA, et al.,

Defendants.

Before the Court is plaintiff's motion to compel production from non-parties, the Erie County District Attorney and Emily Trott, Esq., plaintiff's former criminal defense counsel (Docket No. 19). Plaintiff did not serve a subpoena pursuant to Fed. R. Civ. P. 45; rather, he served notices to produce documents under Rule 34. Rule 34 applies to production by a party in an action and not for non-parties. See Fed. R. Civ. P. 34(c) ("a person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45"); Hickman v. Taylor, 329 U.S. 495 (1947). Absent the subpoena, this Court lacks jurisdiction over non-parties the District Attorney and Ms. Trott to compel their production. Therefore, plaintiff's motion is **denied**.

So Ordered.

/s/ Hugh B. Scott

Honorable Hugh B. Scott
United States Magistrate Judge

Dated: Buffalo, New York
April 21, 2006